

confirming and ratifying acts provided that all preexisting rights be protected.

As we all know, when Congress passes a validating or confirmatory statute, the legal title passes as completely as if a patent were issued, and the power left to the United States is the power to survey and define the boundaries of the tracts validated, as determined by the U.S. Supreme Court in *U.S. v. State Inv. Co.*, 264 U.S. 206 (1924).

When the Taylor Grazing Act was enacted, the Congress emphasized protection of the prior existing rights, and called for establishment of the grazing preferences. Following passage of the act, the Department of Interior surveyed existing allotments throughout the West and issued adjudications establishing the grazing preference right attached to that adjudicated allotment.

Secretary of Interior Babbitt issued his regulations of grazing in the so-called Rangeland Reform, and one of those regulations replaced the term "grazing preference" used by the Congress in the Taylor Grazing Act with the term "permitted use," and made that grazing use dependent upon the discretion of the Secretary. In *PLC versus Babbitt*, United States district judge Brimmer enjoined the Secretary from replacing the "grazing preference" with a discretionary permitted use. In his decision, Judge Brimmer traced the development of a grazing preference right:

Congress enacted the Taylor Grazing Act in 1934. Pursuant to the Act, the Secretary identified public lands "chiefly valuable for grazing and raising forage crops and placed these lands in grazing districts. Thus, the Department of Interior engaged in a lengthy adjudication process to determine who was eligible for a grazing preference. This process began in the 1930's and took nearly 20 years to complete. The Department issued adjudication decisions awarding grazing preferences to qualified applicants. The term "grazing preference" thus came to represent an adjudicated right to place livestock on public lands.

Judge Brimmer continued: "The grazing preference attached to the base property and followed the base property if it was transferred."

Mr. Chairman, the bill without the second degree amendment could have allowed the Secretary concerned to separate that adjudicated right from the base property. No longer would the adjudicated right to place cattle on an "allotment" be "appurtenant" to a base property. This bill would have downgraded that legal connection to "associate with." Additionally, the lease transfer section of this bill would have left the transfer of the adjudicated right to the sole discretion of the Secretary, with absolutely no qualifications. This is wrong. The Taylor Grazing Act already has adequate qualification requirements, and this bill will supersede Taylor.

Judge Brimmer's decision is critical to the ranchers who are dependent upon forage rights on Federal lands. It acknowledges grazing preference as a "use right." It is a deci-

sion which specifically states that the Secretary has "an affirmative duty to protect" the "grazing preference." We must not extinguish that right, and with the amendments, it does not.

The lawyer who argued *PLC versus Babbitt* to the Tenth Circuit Court of Appeals is very concerned about the way the manager's amendment was written. I quote from an October 29, 1997 letter from Connie Brooks:

The term appurtenant was originally described in the first rules under the Taylor Grazing Act. The appurtenance issue is very significant with respect to transferability of the grazing preference. Once a preference or grazing use was "appurtenant" or "attached" to a base property, it meant that the transfer of the base property included the transfer of the grazing preference or grazing use. Based on this fundamental premise, ranches to this day can be mortgaged, inherited, and bought and sold with the assurance that the grazing rights on Federal land will also be transferred.

Again, the second degree erased the bill's entire attempt to define the base property and allotment, and I thank Chairman SMITH for agreeing to this.

Regarding the lease transfer language, Connie Brooks, again, the lawyer who argued *BRIMMER*, wrote:

"This may well spill over into the long-standing interpretation of the Taylor Grazing Act, which requires the Secretary to recognize any transfer of the base property and grazing preference. The Forest Service will require the waiver of the permit back to the agency and re-issuance to a purchaser. The concern is that if there is an issue of discretion then we will see the BLM seeking to cancel a grazing preference and permit rather than transfer it. The cancellation and issuance of a new permit will trigger a host of environmental and permitting issues, which would make ranches difficult to sell as cattle ranches and increase the likelihood that they will be developed as subdivisions, reduce the value of the ranch and collateral.

Mr. Chairman, this is a quote from the woman who argued the Brimmer decision. This is a property rights, 5th amendment issue. We cannot allow these ranches that have been passed down from generation to generation to have their adjudicated preferences separated from them. The ranches will become useless, and families will be destroyed.

The second degree amendment addressed my concerns. Again, I thank the Chairman and all those who worked so very hard on this bill.

I urge adoption of the bill.

TRIBUTE TO KEITH FORBES

HON. DONNA M. CHRISTIAN-GREEN

OF THE VIRGIN ISLANDS

IN THE HOUSE OF REPRESENTATIVES

Friday, October 31, 1997

Ms. CHRISTIAN-GREEN. Mr. Speaker, I rise to pay tribute to Mr. Keith Forbes, a fellow

Virgin Islander, close family friend and one of the pillars of my childhood, who passed away last week. Mr. Forbes dedicated his life to the service of God, his family, and his community, making the Virgin Islands a better place due to his efforts.

Keith Forbes was born on October 28, 1920 on the island of St. Croix. He served the St. John's Anglican Church Community in Christiansted for over 60 years in many capacities. As a young boy, he served as an acolyte, licensed lay reader, and later conducted outreach services at the correctional facilities and outlying areas of St. Croix. He also served on the Vestry where his duties included the position of junior and senior warden and vestry member emeritus.

In 1944 Mr. Forbes began what would eventually span more than five decades of active Masonic involvement. He was installed as a Freemason in the Sovereign Grand Lodge of Puerto Rico and served as the past district deputy grandmaster and past district deputy grand instructor of that lodge. He became a founding member of the Caribbean Light Lodge No. 101, as well as a charter member of Master Masons Lodge of Anguilla, W. I. Mr. Forbes also held the positions of high priest of Zetland Chapter No. 359 St. Thomas; Supreme grand Royal Chapter of Royal Arch Masons of England; member Chapter Rose Croix, HRDM No. 48 Jamaica, W. I.; Supreme Council 33 Degrees Masons of England of Wales; Past High Priest of Caanan Chapter No. 1, and past commander Knight's Templar.

From 1952 to 1979, he began his association with the Federal judicial system, starting as a clerical assistant and retiring as the deputy clerk-in-charge, for the St. Croix Division of the U.S. District Court.

Throughout the late sixties to the early eighties, he owned and operated "The Peppermint Parlor", a popular local restaurant, which served as a friendly family gathering place for the community.

In 1988 he was named president of the board for Brodhurst Printery, Inc., parent company of the St. Croix Avis, the local newspaper for that island district, maintaining that position until his untimely death.

He was a founding member of the Gentlemen of Jones, a charitable community organization that provides services to the people of St. Croix, especially renowned for their Christmas charity work in the city of Frederiksted.

On behalf of the people of the Virgin islands of the United States, I salute Keith Lancelot Forbes for his dedicated service to God, his family, and community.